

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DUSTIN SMITH,)	
)	
Plaintiff,)	
)	
v.)	No. 1:17-cv-03915-SEB-DML
)	
CRAIG JACKSON Correctional Officer,)	
et al.,)	
)	
Defendants.)	

Entry Dismissing Action and Directing Entry of Final Judgment

This matter is before the Court on the defendants' joint motion to dismiss this action pursuant to Federal Rule of Civil Procedure 41(b). For the reasons explained below, the motion is granted as to all defendants.

The defendants seek dismissal on the basis that Plaintiff Dustin Smith has failed to provide them with an updated address or otherwise participate in this action since his apparent release from the Madison County Correctional Complex (MCCC). Counsel for the defendants note that they have sent their appearances, discovery requests, answers, initial disclosures, and additional correspondence to Mr. Smith at MCCC. However, these mailings have all been returned by the Postal Service. *See* dks. 34-1, 34-2, 34-3, 34-4. The Postal Service has also returned orders the Court has attempted to send to Mr. Smith. *See* dks. 38, 39. The defendants also represent that they have not received initial disclosures or any other documents from Mr. Smith since the Court entered its pretrial schedule on December 20, 2017.

The Court alerted Mr. Smith on three occasions that he must continue to provide the Court with updated contact information and that failure to do so could result in dismissal. Dks. 8, 16,

25. MCCC's address is the only address Mr. Smith has provided to the Court. Mr. Smith has not filed any documents with the Court since January 8, 2018, and it does not appear that he has received any mail from the defendants or the Court since at least February 22, 2018 (the earliest postmark date among the returned documents).

A district court may dismiss an action with prejudice "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order." Fed. R. Civ. P. 41(b). Whether dismissal is an appropriate sanction for a plaintiff's failure to prosecute "depends on all the circumstances of the case." *Kasalo v. Harris & Harris, Ltd.*, 656 F.3d 557, 561 (7th Cir. 2011). Dismissal is generally appropriate only "when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing." *Salata v. Weyerhaeuser Co.*, 757 F.3d 695, 699 (7th Cir. 2014). "Factors relevant to the decision to dismiss include the plaintiff's pattern of and personal responsibility for violating orders, the prejudice to others from that noncompliance, the possible efficacy of lesser sanctions, and any demonstrated merit to the suit." *Pendell v. City of Peoria*, 799 F.3d 916, 917 (7th Cir. 2015). "With those factors in mind, a court may dismiss a suit after the plaintiff has willfully refused to comply with discovery orders and the plaintiff has been warned that noncompliance may lead to dismissal." *Id.*

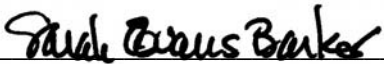
Mr. Smith's failure to provide the Court or the defendants with his current mailing address or otherwise participate in this action necessitates the dismissal of this action with prejudice pursuant to Rule 41(b). Mr. Smith has failed for over five months to participate in this action as directed by the Federal Rules of Civil Procedure and the Court's orders. This has prevented the defendants from progressing toward resolution of this case. Although dismissal is a harsh consequence, Mr. Smith's failure to provide the Court or the defendants with updated contact information does not permit the Court to remedy the situation with lesser sanctions. And, in any

event, Mr. Smith has already been provided with three warnings that his failure to provide current contact information could result in dismissal.

The defendants' motion to dismiss, dkt. [34], is **granted**. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 6/6/2018


SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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